

1895-083 Chancery Causes: Harvey Young vs. Ollie M. Kendrick
Lee Co.

Litton, Barker, Duff, Kendrick

CA Estate Disput.
T. Property

To The Hon H. S. K. Morrison Judge
of the Circuit Court of Lee County
Virginia:

Your orator Harvey Young who
humbly complaining would re-
spectfully represent that your
orator and one Ollie M. Kendrick an
infant of about 12 years of age
are the joint owners of three small
tracts of land situated in this
County on what is known as the
Pearvine Knob, on the head water
of Wallen Creek in said County.
One tract consists of 138 acres, and
other two of 20 acres each. The said
infant owns one fourth, and $\frac{1}{4}$ of
 $\frac{1}{4}$, the residue belongs to your orator.
The land is mostly in woods and
is of a steep poor and unprofit-
able quality. It is so situated that
it can not be conveniently
partitioned without injury to its
value thereof especially as respects
to said infant who would be en-
titled to only $49\frac{1}{2}$ acres and the rent
would hardly pay the taxes thereon.
Your orator therefore asks that the
whole subject be sold and the

proceeds of the sale divided, as being
the only practicable mode of par-
tition -

The object of this bill therefore
is to obtain a decree directing a
sale of the whole subject and a
partition of the proceeds thereof.
Your orator is informed and believes
that this will be advantageous, to
said infant and is desired upon
the part of her guardian A. J.
Littor and her other relations and
friends. But of this more will
be fully made.

Your orator therefore prays that
Ollie M. Kendrick be made a
party defendant to this bill and
answer its allegations but not
upon oath; that a guardian ad
litem be appointed to answer &
defend for her her - and on a
hearing a decree be rendered
directing sale of the whole tract
together and that after the expense
of sales ^{paid} pro rata out of the same
the residue be divided ^{according to title} ~~equally~~
between your orator & the said

infant- But if this should be
deemed not best then for partition
to be made of lands themselves
and for all other further and general
relief. May your wisdom
A. L. P. Coleman.

P. 9.

C 9.46 ad
 Depo. 2.00 ad
 15.00 ad
 Estimate 5.00 ad

\$31.46
 Com. 26.50 ad
 57.9

Harvey Young

Bill Chy

Ollie M. Kendrick

1892 1st March Rules

Spa, but did not
 leave the office, being an infant

" 2nd March Rules
 G. A. L. filed & D. filed

" 1st Apr. Rules
 Kisi caught & D. filed

" 2nd Apr. Rules come in

" 1 May "

" 2 " " Cause set
 for hearing by D.

Ollie M. Kendrick &
 Young

3 months 135
 2 2 1/2 years
 on 1st in 1890
 12 years

130
 20
 20
 170

7.5

11
 26.5

1.64

1.17

3.14

0.02

The separate answer of Ollie M. Kendrick, an infant under the age of twenty-one years, by A. M. Goins, her guardian ad litem, assigned to defend her in this suit, to a bill of complaint exhibited against her, in the circuit court for the county of Lee, by Harvey Young.

The respondent, reserving to himself the benefit of all just exceptions to the said bill, for answer thereto, or to so much thereof as she is advised that it is material she should answer, by her said guardian ad litem, answers and says:—

That she is an infant of tender years, and by reason of her infancy is incapable of understanding, or of taking care of her rights and interests. She therefore, by her said guardian, commends herself and her rights and interests to the protection of the court, and prays that no decree may be pronounced which will tend to her prejudice.

And having fully answered, the said respondent prays to be hence dismissed with her reasonable costs in this behalf expended, and she will ever pray, &c.

A. M. Goins, Guardian
ad litem for Ollie M. Kendrick

Virginia:

Lee County, to-wit:

This day A. M. Goins, whose name is signed to the answer above written, ^{personally appeared before me,} and made oath that the statements contained in the said answer, so far as made

of his own knowledge, are true; and so far as made from knowledge or information derived from others, he believes to be true.

Given under my hand this 17th day of Feb., 1892. J. A. Soyatt O.C.

Harvey Young

23. } Pres. of Guardian
ad litem.

Ollie W. Kendrick.

Filed at 2 March
Rules 1892.
J. A. Soyatt O.C.

Harvey Young Plff }
against }
Ollie M. Kendrick Defd } In chy.

This cause came on to
be again heard upon the papers
formerly read & the ^{& deed made by} report of Special
Commissioner D. P. Sewell to which
there are no exceptions, and was
argued counsel, On consideration
of which, said report having been
filed more than 10 days before the
first day of this ^{term of the} court, ~~it~~ is
adjudged, ordered & decreed that said
report be & the same is hereby confirmed,
& the deed reported therein is also
approved & confirmed And the clerk
of this court will deliver the same
to said Harvey Young for recordation
And it is further decreed that said
Harvey Young pay unto said
Sewell comm. for making & executing
said deed the sum of \$5⁰⁰ for
which execution may issue.

And it further appearing that
A. J. Litton guardian for said
Ollie M. Kendrick has executed
the additional bond ^{in the penalty of \$500⁰⁰ with} as such
guardian as was required by

Harvey Young as surety

Harvey Young

23 Decer

Allie M. Kendrick

March 2, 1895

O.B.

Page 137

Enter this

M. J. M.

March 27th 1895

& that it is good & sufficient
a former decree herein entered, it is
further ordered that said Commissioner
Swell turn over to the said
A. J. Litton the fund in his
hands as court, arising from
the sale of the interest of Allie
M Kendrick in the said in the
proceedings mentioned & that
said A. J. Litton become
chargeable therefor as such
guardian & court Swell
will report his action to
this Court at ~~the~~ next
term & this cause is continued.

Harvey young
vs { Deuel

Ollie M. Kendrick

Nov 1. 1894-
Entered in
Order Lehman
Book Page 96

Enter this
M J M
Nov 15 1894-

Harvey Young
against } Duchy -
Ollie M. Kendrick }

This cause came on this day to be again heard upon the papers formerly read & the report of D. P. Sewell, special commissioner, filed Oct 22nd / 1894 to which there are no exceptions & was argued by counsel. On consideration of which & for reasons appearing to the court it is adjudged, ordered & decreed that said report be & the same is hereby confirmed & it appearing ~~that~~ from said report that the purchaser, Harvey Young has fully paid the purchase money notes executed by him for the land sold herein & is therefore entitled to a deed for the same it is ordered that D. P. Sewell be appointed a commissioner for the purpose of conveying by deed with covenants of special Warranty to the said land to said Harvey Young the purchaser thereof; and it further appearing from said report that the bond

x and said court will report the same
and ~~the action~~

executed by A. J. Litton as guardian
for Ollie M. Kurdiak, ^{is not sufficient} it is further
adjudged, ordered & decreed that said
Litton be required to execute
^{before the clerk of this court} an additional bond in the
penalty of \$500⁰⁰ before he
is entitled to receive the
funds as guardian for the said
Ollie M. Kurdiak. ~~For where the~~
~~said A. J. Litton shall have exe-~~
~~cuted the said bond then D. P.~~
~~Swett, special Commissioner, will pay~~
~~over to him the funds arising~~
~~from the sale of the land~~
~~known & said Court, will~~
~~report his action to this~~
~~Court at a future term &~~
~~the cause is continued.~~

Harvey Young
Against

Plff

In Chy

Ollie M. Kendrick Dft

This cause came on this day again to be heard upon the papers formerly read & the report of sale of the land in the Bill & proceedings mentioned made by W. C. Sewell special Commissioner & filed October 25th 1892 to which there are no exceptions & was argued by counsel. On consideration whereof & for reasons appearing to the Court said report ^{& sale are} each confirmed and the said Commissioner will collect the notes for the purchase price of the said land from the purchaser as it falls due & he will report his action to a future term of this Court & the cause is continued.

Harvey Young

vs. Deere
conf. sale

Allie M. Kendrick

Mar 7. 1894

E. C. O. R. 2 Page 567.

Mar 10. 1894

Enter this

H. & K. M.

March 10 1894

Harvey Young
against
Ollie M. Kendrick

This Cause
comes on this day to be
heard upon the bill of its plff
and Answer of A. M. Gomis
guardian ad litem for the
infant defendants and rep-
lication thereto, depositions of
witnesses and arguments of
Counsel. On consideration of
which and for reasons appear-
ing to the Court it being satis-
factorially ^{proved} ~~proven~~, that the in-
terest of the infant would be
best served, as well all parties
concerned, to make sale of its
whole tract together - D. C. Sewell
who is hereby appointed a special
Commissioner for the purpose will
proceed and see the land of land
in the bill mentioned. He will
make sale on some Court day
at the front door of the Court
House of said County by pub-
lic out Cry to the highest bidder
on a credit of one or two years
except the Cost of suit & sale
he will require paid in hand
and for the residue take bonds
payable to himself as Com. bearing
interest from day of sale.
But before proceeding to execute

This decree said Com will ex-
ecute bond before the Clerk of this
Court in a penalty of \$2000.00 with
approval security conditioned to duly
perform his duties hereunder -

He will advertise the time term,
and place of sale for 30 days
in the great chamber of the Court-
House of this County and at two
or more public places in said
County one of which shall be
in the neighborhood where the land
lies. He will report his action
to this Court at its next term -
The Cause is continued.

Harvey Green

Decree
for sale

Willie W. Kunklerick

June 1st 1892

Entered May 28th

Page 401-22

June 2nd 1892

W. J. Kunkler

Entered this
June 9th 1892
W. J. Kunkler

Int 9. State any fact, known to you that would, tend to show, whether or not a sale or partition would be best for both parties.

Ans. I think the location of said land is such that it would cost a good deal to divide it and the purchasers of timbered and mineral lands generally desire them in large boundaries. And further this deponent saith not,
A. J. Lillon

The depositions of A. J. Lillon, Samuel Barker and G. C. Duff.

taken at, A. J. Lillon's Store in Lee County Virginia on the 31st day of May 1892, pursuant to agreement and interrogatories agreed upon by the plff and A. M. Gorins - ~~defendant~~ guardian ad litem for infant defendant Ollie M. Kendrick and which are intended to be read as evidence in the Chancery Cause of Harvey Young against said Ollie M. Kendrick defendant, now pending in the Circuit Court of Lee County Virginia:

A. J. Lillon a witness of lawful age being first duly sworn deposes & says.

Interrogatory 1.

What is your age occupation and residence

Ans I am fifty five years old, A merchant and ~~formerly~~ My residence is Sickleyville Va.

Int 2. Do you know the land, owned by the plff and defendant?

Ans. I do.

We agree upon the following
interrogatories in the case named
as shown by them. from 1 to 10 both
in Chancery.
A. M. Gorins. Guard. ad litem.
May 29 - 1892.
A. J. Lillon & Co. for plff.

Int 3 Please describe it, its quantity, value, location, and state of cultivation Number of acres &c?

Ans: It contains about two hundred acres and is worth about four dollars per acre. It is on the south side of Wallace Bridge and known as the Pea Vine Brook farm. It is in a low state of cultivation scarcely any fence and nearly all waste land. I am guardian for the infant heir and I advertised her interest for rent for one year and it only rented for one dollar and fifty cents for her entire interest.

Int 4 What is a fair cash value for them, sold on a credit of say one or two years?

Ans. About five dollars per acre.

Int 5 Can these lands be so partitioned as to give the infant its share in a form and location to be valuable and profitable to it? or would its best interest be promoted by a sale

of the whole tract and a division
of the proceeds?

Ans. I think not, and believe it
would be best to sell the whole
tract as the location of said ^{land} is such
that it would hardly be possible to
partition it so as to be of much value
as a separate share.

Int 6 Would the land taken as a whole bring
a better price sold together or would it
bring more, to partition it, and sell in
separate parcels?

Ans. I think it would bring more
sold as a whole.

Int 7 What is a fair cash value of the annual rents & profits of the infant's share, when partitioned?

Ans. About five dollars per year for the whole share.

Int 8 Would or not the infant be benefited in your opinion by a sale of the whole tract together, or would its best interest be served by a partition?

Ans. I think the infant would be benefited by a sale of the whole tract.

Samuel Barker a witness of lawful age being first duly sworn deposes and says

Interrogatory 1.

What is your age occupation and residence

Ans. I am twenty nine years old and a farmer and my residence is near Pea Vine Knob.

Int. 2 Do you know the land owned by the plff. and defendant;

Ans I do.

Int. 3 Please describe it, its quantity, value, location and state of cultivation, numbers of acres &c.

Ans It contains about two hundred acres and is worth about four dollars per acre and near Pea Vine Knob and in a bad state of cultivation and there is no fence worth anything much.

Int. 4 What is a fair cash value for them sold on a credit of say one and two years,

Ans. About four dollars and fifty cents per acre.

Int 5 Can these lands be so partitioned as to give the infant its share in a form and location to be valuable and profitable

to it, or would its best interest be promoted by a sale of the whole tract and a division of the proceeds?

Ans.

I think it best to sell the whole tract together.

Int. 6

Would the land taken as a whole bring a better price sold together or would it bring more to partition it and sell in separate parcels?

Ans.

I think it would bring a better price sold altogether.

Int. 7

What is a fair cash value of the annual rents and profits of the infants share when partitioned?

Ans.

Not more than four dollars per year.

Int. 8

Would or not the infant be benefited in your opinion by a sale of the whole tract together or would its best interest be served by a partition?

Ans.

I think it would be best for the infant to sell the whole tract together.

Int. 9

State any fact known to you that would tend to show whether or not a sale or partition would be best for both parties?

Ans.

Persons desiring to purchase such lands generally want large boundaries and the location of the land is such that it could hardly be partitioned so as to be of much value as a separate share.

I will further this deponent says that

Daniel Barker

G. C. Duff a witness of lawful age
being first duly sworn deposes and says

Interrogatory 1

What is your age, occupation and residence

Ans. Sixty two years, a farmer and my residence is Sticklyville Va.

Int 2

Do you know the land owned by the plff. and defendant?

Ans.

I do.

Int. 3

Please describe it, its quantity, value, location and state of cultivation number of acres &c

Ans.

I know nothing about the number of acres only from hearsay. I consider it of little value. It is on a spur of Wallins Ridge known as Pea Vine Knob on the south side of said ridge. I have not been on the land for several years but from information it is in a very poor state of cultivation.

Int 4

What is a fair cash value for them sold on a credit of say one and two years?

Ans.

About four or five dollars at most.

Ques 5-

Can these lands be so partitioned as to give the infant its share in a form and location to be valuable and profitable to it, or would its best interest be promoted by a sale of the whole tract and a division of the proceeds?

Ans.

I do not think it can, I think a sale of the whole would be best.

Ques 6

Would the land taken as a whole bring a better price sold together or would it bring more to partition it and sell in separate parcels?

Ans

I think it would bring more sold together.

Harvey Young

23 Dec 1891.

Allie M. Kendrick

Received from
Pottery Store
amount to the
three the money
and sold May
30 1892.

J. C. Bryant & Co.

Int. 7 What is a fair cash value of the annual rents and profits of the infant's share when partitioned?

Ans.

It is worth very little say four or five dollars for the whole share.

Int. 8

Would or not the infant be benefited in your opinion by a sale of the whole tract together or would its best interest be served by a partition?

Ans.

I would say sell it altogether

Int. 9

State any fact known to you that would tend to show whether or not a sale or partition would be best for both parties?

Ans.

In the first place the quantity and quality of the land is such that it could not be partitioned to advantage to either party. Parties who desire to purchase such lands generally want it in large quantities. And further this defendant says that not,

G. C. Duff

I C. D. Bailey a Notary Public for
Lee County do certify that the foregoing
depositions of A. J. Lillie, Samuel Barker
and G. C. Duff were taken sworn to
and subscribed before me at the time
and place mentioned in the caption
Given under my hand and seal
this 31st of May 1892

C. D. Bailey N. P. Seal

Cost

C. D. Bailey Notary Public \$1.50

Samuel Barker Witness .50 cents

Harvey Young - - - - - Pltff.

vs. In chancery

Ollie M. Hendrick - - - - - Def.

To the Hon. H. S. T. Morrison, Judge
of the circuit court of Lee County, T^{ex}.

Your undersigned commissioner
begs leave to report, that, after
duly advertising the time, terms &
place of sale, as was required by
the terms of the decree entered
in this cause at the June term
1892 of your honor's court, he offered
for sale the lands in the bill
of proceedings mentioned, at public
 outcry, at the front door of the
court house on Monday August
15th 1892 that being a court day,
to the highest bidder, on a credit
of 1 & 2 years, except a sum suf-
ficient to pay the commissions of
sale & costs of this suit, which
sum was required to be paid
in hand. After prolonged crying
said lands was knocked off
to Harvey Young for the sum
of \$875⁰⁰ this being the highest
bid offered. As required by
the terms of said decree

said purchaser paid your Court
in Land \$ 57.96 the amount necessary
to cover commissions of sale and the
costs of this suit.

Your Court would further re-
port that of the lands thus
sold the infant Ollie M. Kend-
rick owned $\frac{1}{4}$ and $\frac{1}{2}$ of $\frac{1}{4}$ as
shown by the bill & proceedings
& that said purchaser, Harvey
Young, owned the remainder
Therefore, ^{for the deferred payments} your Court did not
deem it necessary for said
Young, the purchaser, to execute
notes for his own interest
in said lands. But for the
deferred payments for the said
Ollie M. Kendrick's interest in
said land is with $\frac{1}{4}$ and $\frac{1}{2}$ of $\frac{1}{4}$
or, \$ 233.44, the said purchaser
executed to your Court 2 notes
notes for \$ 116.72 each bearing
interest from & due in 1 & 2 years
after the date thereof with
A. R. Hyatt as his security.

Your Court will again report
the commissions arising from the
sale & the costs of this suit.

have been paid, for which
receipt have been taken by your
court & are now in his possession.

This sale, in the opinion of
your court, is a good one
& he would recommend its
confirmation.

Respectfully submitted

D. C. Sewell

Spec. Commr.

Harvey Young
vs } com report of
sale -

Ollie M. Kendrick

Filed Octo 25/89

J. A. Hyatt

Harvey Young
vs

Ollie M. Kendrick

To the Hon. W. T. Miller, Judge
of the Circuit Court for Lee
County, Virginia:

Your Em. Designated spe. Comm.
would respectfully report, that
he has made & executed a
deed conveying the land in
the Bill mentioned to Harvey
Young, the purchaser thereof
with covenants of special
warranted as was directed
by decree entered herein on
15th day of November 1894;
that ~~the~~ charges for same
the fee of 5⁰⁰. x

He would further report
that J. J. Litton guardian for
Ollie M. Kendrick has exe-
cuted additional bond before
the Clerk of your court in the
penalty of \$500⁰⁰ as said guardian
with Harvey Young as surety. Said
Bond your court thinks un-
questionably good

Respt Sub. D. L. Sewell.
spe comm

The files said deed herewith
as a part hereof.

Harvey Young

by report and

21

Ollie M. Kendrick

Filed July 21st 1894

A. B. Munsey
Clerk

Filed

Harvey Young

against

Ollie M. Kendrick

} In chancery

To the Hon. W. J. Miller, Judge
of the Circuit Court of Lee
County, Virginia:

Your undersigned special
Commissioner, who, was by a
decree entered in this cause
on 10th day of March 1894,
directed, among other things,
to collect from Harvey Young
the purchase price for the land
sold in this cause & to leave
to report: That on Oct 18
1894 said Young paid your
comm. the sum of \$239.⁰⁰
which is aggregate amount of
the notes held by him with
interest added except \$25.⁰⁰
which was paid to A. J.
Littou May 15th 1894, and as
I ~~have~~ been informed both
by ^{said} Littou & Young. The above
amount is by your comm.
held subject to Court's order.
He would further report
that said A. J. Littou

has been appointed by the County
Court as guardian for the
infant Ellie M. Kendrick
& has executed bond with
Harvey Young as security
in the sum of \$200⁰⁰ as
such guardian. They said
~~Young~~ makes said bond
good, but the ~~amount~~ ^{bond}
should be for a larger
sum, to wit, \$500⁰⁰ for
the \$239⁰⁰ I hold & \$25⁰⁰
~~paid by Young~~
~~and by Young~~ making
\$264⁰⁰ will be due said
infant.

Respectfully

D. F. Sewell

Spc Comm

The said Harvey Young
is entitled to a deed for
the land purchased by him
he having fully paid the
purchase price, if the \$25⁰⁰
paid to Sutton be considered
a payment.

Respt, D. F. Sewell.

Spc Comm

Harvey Young

vs. Report -

Ollie M. Kendrick

Filed Oct 22

1894-

ARB Munsiey Clerk

KNOW ALL MEN BY THESE PRESENTS, That we

D. C. Sewell
and J. A. Hyatt
are held and firmly bound unto the Commonwealth of Virginia, in the sum of

Two Thousand dollars, to the payment whereof, well and truly to be made to the said Commonwealth of Virginia, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, hereby waiving the benefit of our homestead exemptions as to this obligation, and any claim, right, or privilege to discharge any liability arising under this bond, or by virtue of said office or trust, in any currency, funds, counter claims or offsets other than legal-tender currency of United States. Sealed with our seals, and dated *14* day of *July*, one thousand eight hundred and *ninety two*

The Condition of The Above Obligation is Such, That if the above bound *D. C. Sewell* shall faithfully perform the duties of *his* office or trust, as *Carr.*

under a decree of the Circuit Court of the County of Lee, pronounced on the *9th* day of *June*, 18*92*, in the suit therein depending under the name and style of *Harvey Young* Plaintiff vs. *Ollie M. Smidick* Defendant and properly account for all sums of money *he* may receive as such *Carr.*

then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed and acknowledged in the presence of

D. C. Sewell (SEAL.)

J. A. Hyatt (SEAL.)

(SEAL.)

In the Clerk's Office of the Circuit Court of the County of Lee

This day

suret on the above bond, made oath before me J. A. G. Hyatt, Clerk of the Circuit Court of the County of Lee, that estate after the payment of all just debts, and those for which bound as securit for others, and expect to have to pay worth the sum of

dollars.

Given under my hand this day of 18

Teste: Clerk.

Harvey Young
no 3 Bond

Olie Knudsen

Filed July 14/1892

J. A. Hyatt

The Commonwealth of Virginia.

To The Sheriff Of Lee County Greeting:

We Command You to Summon

Ollie M. Kendrick

To appear at the Clerk's Office of the Circuit Court of Lee County, at the Courthouse on the first Monday in *March* next, being rule day to answer a bill in Chancery exhibited in our said Court against *her* by *Harvey Young*

And have then and there this writ. Witness, J. A. G. Hyatt, Clerk of said Court at the Courthouse.

This *17th* day of *Febry* 18*92*, in the 11th year of the Commonwealth.

J. A. G. Hyatt Clerk.

A Copy Teste

(P)

Harvey Young

resides in Chey

Ollie M. Kendrick

To 1st March Rules 1892.

and leave the
office by order of
Clls Council.

J. H. Hyatt etc